IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

SPECIAL CRIMINAL APPLICATION No 591 of 2000

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Judgment ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

PARESHBHAI M VAGHANI
VERSUS
PANKAJ MANSUKHBHAI SEJPAL

Appearance:
MS PS GONDALIYA for Petitioner
Respondent No.1 - Deleted
MR YS LAKHANI for Respondent No.2

CORAM : MR JUSTICE S.K. KESHOTE
Date of Decision : 15/03/2001

C.A.V. JUDGMENT

#. This petition under Article 226 and 227 of the Constitution of India is directed against the order of the learned Sessions Judge, Rajkot dated 10-5-2000 made in criminal revision application No.49/2000 quashing and setting aside thereunder the order dated 8-3-2000 of the Judicial Magistrate First Class, Rajkot below Ex.5 in criminal case NO.370/97.

#. Before proceeding further in the matter, it is to be stated that this title of the petition, "In the matter under Articles 226, 227 of the Constitution of India" is wholly misconceived. This petition either can be under Article 226 or 227 of the Constitution of India. If we go by the facts of this case and particularly with reference to the provisions as contained in section 397 of Cr.P.C. this petition is maintainable only under Article 227 of the Constitution. Accordingly, this petition is treated and considered under Article 227 of the Constitution of India.

#. The facts of the case are that the petitioner-complainant filed a complaint against the respondent-accused for the offence under section 138 of the Negotiable Instruments Act. In the complaint, it is stated that the respondent has given the cheque for an amount of Rs.1,22,000/- to the petitioner and on presenting of the same to the bankers of the respondent-accused, it was dishonoured. After receipt of dishonoured cheque, the petitioner gave notice to the respondent-accused for payment of amount of cheque within stipulated period, but that has not been done and accordingly, as the offence has been committed punishable under sec. 138 of Negotiable Instruments Act, this complaint has been filed. The petitioner submitted list of documents at Ex.55 with all the original documents in the Court of Judicial Magistrate First Class, Rajkot. After recording plea of the accused and before oral evidence is started, this production was objected by the respondent-accused. Learned Judge under its order dated 8-3-2000 rejected the production of the documents on the ground that such documentary evidence could have been produced at the earlier opportunity. Against this order, the petitioner filed a criminal revision application in the Court of Sessions Judge, Rajkot, which came to be finally decided by the Additional Sessions Judge, Rajkot, under its order dated 10-5-2000. This revision application was dismissed on the ground that it is barred by subsection (2) of section 397 of Cr.P.C.. It is held that the order passed by the learned trial court is an interlocutory order. Hence, this petition before this

Court.

#. Learned counsel for the petitioner submitted that the learned trail Judge has committed serious error of jurisdiction in passing of the impugned order. It is a case where the documents which are sought to be produced by the petitioner are to be permitted to be produced. Another ground has been raised that where the documents have been produced, the learned trial Judge should have passed a reasoned order but curiously enough, in this case, learned trial Judge has not given any reason good, bad or indifferent not to permit the petitioner to produce the documentary evidence. It is contended that even where the oral evidence of the complainant is completed, it is open to the complainant to produce the documents and it will not cause any prejudice to the accused.

#. On the other hand, the learned counsel for the respondent supported the order passed by the court below.

#. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties. In para-3 of the special criminal application, I find that these documents are produced by the petitioner at the stage even oral evidence of the petitioner was not completed. In fact, the cross-examination of the petitioner was in process. During the cross-examination of the petitioner, a question was put by the respondent-accused whether he is having any book of accounts like purchase and sale register or rojmel. The petitioner has given reply that he is maintaining the books of accounts but on the day of his cross-examination, he had not brought with him those record, and therefore, prayed for time to produce the documents. Time prayed for was granted and the matter was adjourned and on adjourned date, this application is filed. These facts have not been controverted by the respondent-accused. In this case at that stage the complaint has completed his oral evidence. Otherwise also, I fail to see any justification in the approach of the learned J.M.F.C. to reject this application filed by the petitioner by a non-speaking order. Even if it is taken that oral evidence of the complaint had been completed there is no bar in Cr.P.C. that further documentary evidence cannot be produced. Section 138 has been inserted in the Negotiable Instruments ACt and a simple reading of this provision leaves no doubt in the mind of the court that civil liability has been made a criminal offence in case where the conditions as laid

down under that section are fulfilled. The offence under section 138 of Negotiable Instruments Act is made out on nonpayment of the amount of dishonoured cheque after receipt of notice by the drawer thereof. In this case, there is no dispute that cheque has been given by the respondent accused to the petitioner and on presentation thereof it bounced and the amount has not been paid after notice. In these facts, complaint has been filed.

#. Learned Judicial Magistrate has not considered an important aspect that the necessity for filing these documents arises because of question put by the respondent-accused to the complainant in his cross-examination. Documents i.e. accounts books maintained by the complainant are not the documents which are to be produced by the complainant. Along with the complaint, the petitioner has to produce documents, namely, dishonoured cheque, intimation received from the bank, copy of notice sent to drawer of the cheque with the proof of service thereof. In the complaint filed under section 138 of Negotiable Instruments ACt, the Court is not required to go on other facts whether there was any occasion for the drawer to give the cheque to the drawee or not. These are all irrelevant considerations in the criminal complaint filed by the complainant under section 138 of Negotiable Instruments Act. In this complaint, three things are to be proved. First is that the cheque has been drawn in favour of the drawee by the drawer. Second, on presentation of the cheque, it was dishonoured and third, on notice given to him within stipulated period, the amount has not been paid. These three things if are established then offence is proved and accordingly, drawer has to be convicted and sentenced.

#. Leaving apart the question that the approach of the learned Judicial Magistrate in this case was not proper, other wise also, I fail to see any justification in the approach of the respondent-accused to put such a question to the petitioner in cross-examination which is irrelevant to the complaint. Once the cheque is dishonoured which was given by the other side, then whatever specific defence is taken the accused has to prove the same. If for his defence, account books were necessary, he should have called the same. I am of the opinion, in the facts of this case, that it was absolutely an irrelevant question which was put to the complainant by the respondent. However, when this question was put and these documents were not the documents to be produced along with the complaint, the

first occasion for the petitioner for filing of these documents was after the day on which this question has been put and on that date, he has not brought the documents to the Court, rightly request has been made by him for adjournment of the matter and on the adjourned date, he was perfectly correct in his approach to file these documents. As said earlier, this question was absolutely an irrelevant question put to the complainant, there is no necessity for filing of this document by him and nonfiling thereof will not have any effect on the merits of the matter.

#. There is yet another ground on which this petition deserves to be dismissed. This was an interlocutory order and rightly held so by the learned Additional Sessions Judge. When the Legislature has not provided second revision application or appeal against this order, the intention behind the same is clear to give finality to such orders. This remedy under Article 227 of the Constitution cannot be permitted to be a revision application before this Court in the matter of interlocutory orders passed by the trial court which the Parliament specifically barred.

Reference here may have to the decision of the Apex Court in the case of Laxmikant Revachand Bhojwani vs. Pratapsingh Mohansinh Pardeshi reported in 1995 (6) SCC 576. In that case their Lordships of the Hon'ble Supreme Court held that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of India. In that case, the Court stated that the Bombay Rents Hotel and Lodging House Rates Control Act, 1947, is a special legislation governing landlord and tenant relationship and disputes. Legislature in its wisdom not provided second appeal or revision to the High Court. Object is to give finality to the decision. The High Court under Article 227 of the Constitution cannot assume unlimited prerogative to correct all species of hardships or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law and justice where grave injustice would be done unless the High Court interferes.

In this case, otherwise also, it is difficult to accept that if this Court does not interfere in the matter it will result in causing grave injustice to the petitioner. The interlocutory order is always subject to challenge while challenging the final decision given in the proceedings. It is not immune from challenge but it cannot be permitted to challenge before proceedings

are finally terminated. The reason is very obvious. Otherwise by challenging this interlocutory orders unscrupulous litigants will make it difficult for the Courts to finally decide the matters. It will be easier for the parties to the litigation to stall the final adjudication of the matter. Ordinary life of the litigation in the Courts in the country is sufficiently long and in case the interlocutory orders are made appealable or revisable certainly this will give an additional life to the litigation and it may not be possible for the courts to decide the matter expeditiously. This is the intention for which revision application is barred under section 397 (2) of the Act, agaisnt the interlocutory order and it has to be given effect to. This way of challenging the interlocutory orders by resorting to Article 227 of the Constitution or section 482 of Cr.P.C. deserves to be deprecated. This is what otherwise indirectly the Court will permit in each and every case which is not permissible directly. In each and every case it is difficult to appreciate the approach of the litigants to challenge the interlocutory orders under Article 227 of the Constitution. Only in exceptional or hard cases, interference of this Court under Article 227 of the Constitution may be justified but not as a rule. It is a tendency of the litigants which everyday the court is seeing not to allow a single interlocutory order to remain unchallenged. This case clearly gives out an example of the same. The revision application has been filed and then this petition has been filed by the petitioner and it has consumed precious and valuable time of the courts. This is an interlocutory order and it is always open to the petitioner to challenge the same while challenging the final decision given in the matter. Though the approach in which this matter has been decided by the learned trial court is difficult to appreciate and it is expected of the learned trial court to pas a reasoned order on the application filed by the parties but as this is only an interlocutory order and in case this Court does not interfere in the matter, it will not result in causing any grave injustice to the petitioner, no interference is called for under Article 227 of the Constitution. This matter is squarely covered by the decision of the Hon'ble Supreme Court in the case of Laxmikant Revachand Bhojwani vs. Pratapsinh Mohansinh Pardeshi (supra). Otherwise also, on merits, the question put by the accused-respondent in the cross-examination to the petitioner was totally irrelevant to the controversy and this doc
not to be produced by the petitioner and this is another ground on which no interference is called for in the

matter.

##. In the result, this special criminal application fails and the same is dismissed. Rule discharged. However, in the facts of this case, no order as to costs.

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zgs/-